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No. 81-2306

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LOCAL 66, BOSTON TEACHERS UNION, AFT, AFL-CIO
Petitioner,
v.
BOSTON SCHOOL COMMITTEE, ET AL
Respondents,

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF AMERICAN FEDERATION OF TEACHERS, AFL-CIO IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The American Federation of Teachers, AFL-CIO (hereinafter referred to as "AFT") respectfully moves for leave to file the attached brief *amicus curiae* in this case. The AFT has sought the consent of the respondents' attorneys to the filing of this brief. The consent of all the parties has been obtained except Concerned Black Educators of Boston, which has not responded to our request, and Tallulah Morgan, et al., who rejects our request.

The AFT is an AFL-CIO union made up primarily of elementary and secondary teachers, college and university professors and other non-supervisory personnel in the field of education. It was founded in 1916 and now represents over half a million members organized in over 2,000 locals in this country and abroad. Included in its membership are teachers of both sexes and all races.

As an exclusive bargaining representative for teachers, the AFT and its locals regularly negotiate and administer collective bargaining agreements which contain seniority-based layoff and recall provisions. As a trade union of educators, the AFT actively supports school and faculty desegregation, affirmative action programs, and equal employment opportunities.

Pursuant to the overwhelming mandate of delegates to AFT National Convention in July 1982, the AFT moves to join and support its affiliate, Local 66, Boston Teachers Union, AFT, AFL-CIO, in its effort to secure certiorari of the decision of the First Circuit Court of Appeals in *Morgan, et al, v O'Bryant, et al* (C.A. 1, Nos. 81-1561, 81-1617-1619 and 81-1646; Feb. 17, 1982).

Our participation will provide the Court with the perspective of a national labor union of teachers that is committed to collective bargaining, the defense of seniority, and the preservation of quality education.

Respectfully submitted,

Bruce A. Miller
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AFL-CIO

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QUESTION PRESENTED

The American Federation of Teachers adopts the Statement of Question Presented and the Petition of Local 66, Boston Teachers Union, AFT, AFL-CIO for the reasons set forth below under the heading "Interest of the American Federation of Teachers, AFL-CIO and Reasons for Granting the Writ."

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Cases and Authorities	iii
Interest of the *Amicus Curiae* and Reasons for Granting the Writ	1
Conclusion	3

TABLE OF CASES AND AUTHORITIES

Cases:

McPherson v. School District No. 186, Springfield, Illinois, No. S-CIV-74-44 (C.D. Ill. 1981) (order) *appeal docketed* No. 82-1193 (C.A. 7, Feb. 10, 1982) 3

Morgan v. Hennigan, 379 F. Supp. 410 (D. Mass. 1974), *aff'd sub nom. Morgan v Kerrigan*, 509 F.2d 580 (C.A. 1, 1974), *cert. denied*, 421 U.S. 963 (1975) 3

Oliver v. Kalamazoo Board of Education, 498 F. Supp. 732 (W.D. Mich. 1980), *appeal docketed* Nos. 81-1741, 81-1770 (C.A. 6, Dec. 11, 1981).. 3

INTEREST OF AMERICAN FEDERATION OF TEACHERS, AFL-CIO AND REASONS FOR GRANTING THE WRIT

The American Federation of Teachers, AFL-CIO, (hereinafter referred to as "AFT") is an international labor organization representing some 571,600 members and their families. Approximately 450,000 members are teachers covered by collective bargaining agreements. Included in its membership are teachers of both sexes and all races. As exclusive bargaining representatives for teachers, its locals regularly negotiate and administer collective bargaining agreements which contain seniority-based lay-off and recall provisions. As a trade union of educators, the AFT actively supports school and faculty desegregation, affirmative action programs, and equal employment opportunities.

The AFT has actively supported the abolition of legal barriers to school and staff integration. The AFT fought faculty segregation by ousting its southern local that maintained segregated membership. Open enrollment, free tuition plans, career ladder programs that enable paraprofessionals to become teachers, and integrated teacher recruitment drives in the South and Puerto Rico were early strategies of the AFT. In many cases these strategies were made part of the collective bargaining agreement. Indeed, the AFT's historical commitment to the principle of equal educational opportunity has served as the philosophical foundation for both its collective bargaining and extensive legislative efforts.

The AFT has supported and encouraged the inclusion of black and other minority group history courses into the required curriculum for all future teachers. The

union has condemned the discriminatory treatment of minorities in textual materials used in education systems and it has requested that local school boards employ textbooks which avoid such discriminatory treatment.

Beyond education, the AFT has been at the forefront in the struggle to eliminate segregation and discrimination in housing, job opportunities and public and private institutions.

Since the 1920's the AFT has refused to hold its annual convention in any city or hotel that did not provide equal treatment for blacks and whites. And, in 1934, the AFT moved its convention from one hotel to another when its black delegates were not accorded equal treatment.

Throughout its history, the AFT has fought many pioneering battles to improve education and the welfare of teachers. Some of its most difficult struggles occurred over the issues of tenure and economic security. The AFT has learned that seniority is the cornerstone of collective bargaining. Seniority guarantees fairness of treatment through the application of racially neutral criteria. It prevents divisiveness among working people by distributing scarcity through a system that is objectively fair. Seniority denies employers the right to use invidious and subjective methods of distributing benefits — methods that pit worker against worker, thereby weakening them and strengthening their adversary. This *Amicus* joins its fellow teachers of the Boston Teachers Union in their Petition because the AFT believes that the decision of the court below will have serious destabilizing effects on collective bargaining and an adverse effect on the education of Boston school children.

The AFT believes this case is of national significance. The questions *sub judice* are at issue in at least two other school desegretation cases on appeal to the Sixth and Seventh Circuits.[1]

The AFT believes that the remedy approved below undermines the original intent of the court in entering its desegregation order. A purpose of that order was to improve the quality of education for students who had been disadvantaged. The relief approved below results in the retention of less experienced, less educated and presumably less qualified teachers. They are substituted for experienced, more educated and presumably better qualified teachers. The relationship of experience to quality education was recognized by the District Court when it noted that "in any calling, experienced practitioners are ordinarily more effective[.]" *Morgan v. Hennigan*, 379 F. Supp. 410, 462 (D. Mass. 1974), *aff'd sub nom. Morgan v. Kerrigan*, 509 F.2d 580 (C.A. 1, 1974), *cert. denied*, 421 U.S. 963 (1975).

The remedy provided in this case raises significant questions of collective bargaining and educational policy that should be reviewed by this Court.

CONCLUSION

For the foregoing reasons, the AFT asks this Court to review the decision below.

Respectfully submitted,

Bruce A. Miller
Attorney for Amicus Curiae
American Federation of Teachers, AFL-CIO

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[1] *Oliver v. Kalamazoo Board of Education*, 498 F. Supp. 732 (W.D. Mich. 1980), *appeal docketed*, Nos. 81-1770 and 81-1741 (C.A. 6, Dec. 11, 1981); *McPherson v. School District No. 186, Springfield, Illinois*, No. S-CIV-74-44 (C.D. Ill. 1981) (unpublished Order), *appeal docketed*, No. 81-1193 (C.A. 7, Feb. 10, 1982).